

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA

(PROBATE AND ADMINISTRATION)

PROBATE

In the matter of the Estate of RICHARD OVID
THRONE, deceased, testate.

BETWEEN:

MICHAEL PHOENIX, personally and in his
capacity as Executor appointed under the Last
Will and Testament dated the 14th day of
March, 2000, of RICHARD OVID THORNE,
deceased.

Plaintiff

-and-

1. JACQUELINE THORNE, personally and in her
capacity as the Administratrix of the Estate
of ETHEL THORNE, deceased, pursuant to
Letters of Administration No. 2016-HC-
DEM-EST-48 granted on the 22nd day of
April, 2016.
2. JACQUELINE THORNE, personally and in her
capacity as the Administratrix of the Estate
of RICHARD OVID THORNE, deceased,
pursuant to Letters of Administration No.
2015-HC-DEM-EST-633 granted on the 3rd
day of August, 2015.

3. ANDREW MARSHALL

Defendants
Jointly and Severally

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Abiola Wong-Inniss representing the Plaintiff

Mr. Parmanand Mohanlal representing the First and Second Named Defendants

Mr. Rajendra N. Poonai S.C. representing the Third Named Defendant

Delivered March 26th 2021

RULING

BACKGROUND

Ethel Thorne, deceased, was the owner of property known as and situate at Sub-lot “B”, Lot 8 Norton Street, Lodge, Georgetown by County of Demerara Transport No. 1896 of 1969 [**Exhibit “A1 - A2”**] [Hereinafter referred to as the “Property”].

Ethel Thorne, deceased, died testate on July 8th 1979 and by her Last Will and Testament dated September 15th 1969 [**Exhibit “B”**] she devised the “Property” to her youngest son, Richard Ovid Thorne and appointed David Thorne, another son, Executor of the Will.

David Thorne was granted Probate of the Will and administration of the Estate of Ethel Thorne, deceased, on October 22nd 1980 by the Supreme Court of Guyana [**Exhibit “C1 - C2”**], however, David Thorne died in November 1996 before fully administering the Estate of Ethel Thorne and, particularly, did not vest title of the “Property” in the name of Richard Ovid Thorne.

Letters of Administration with Will annexed was granted to the Plaintiff, in his capacity as the duly constituted attorney of Richard Ovid Thorne, to the Estate of Ethel Thorne, deceased on March 15th 2004 by the Supreme Court [**Exhibit “K”**].

Chief Justice Ian Chang issued an Order dated December 14th 2015 in High Court Action No. 2015-HC-DEM-CIV-SA-1124 that the Letters of Administration granted to the Plaintiff [**Exhibit “K”**] was spent since Richard Ovid Thorne had died in March 2008 [**Exhibit “L”**]

Letters of Administration with Will annexed De Bonis Non was then granted to the First Named Defendant [Hereinafter referred to as **Jacqueline** rather than FND since she is also the Second Named Defendant], to the Estate of Ethel Thorne, deceased on April 22nd 2016 by the Supreme Court [**Exhibit “E1 - E2”**].

Upon a declaration that Richard Ovid Thorne had died intestate in the United Kingdom sometime around March 2008, Letters of Administration to the Estate of Richard Ovid Thorne, deceased was granted to the Second Named Defendant, the daughter of Richard Ovid Thorne, [Hereinafter referred to as **Jacqueline**] on August 3rd 2015 by the Supreme Court [**Exhibit “F1 - F2”**].

The other children of Richard Ovid Thorne, Albert Ovid Edward Thorne and Claudette Joseph both renounced their share/s in and to the Estate of Richard Ovid Thorne, deceased in May 2016 [**Exhibits “P1 - P2” and “Q1 - Q2”**].

Jacqueline then sold the “Property” to the Third Named Defendant [TND] on June 21st 2016 [**Exhibits “R1 - R2” and “S1 - S2”**].

The TND became the owner of the “Property” on September 13th 2016 by County of Demerara Transport No. 1174 of 2016 [**Exhibit “N1 - N4”**].

The TND caused a Notice dated September 29th 2016 to be sent to the Plaintiff and his wife to quit and deliver up possession of the “Property” since they reside therein [**Exhibit “W”**].

The Plaintiff claims that Richard Ovid Thorne died on January 12th 2009 as per **Exhibit “AA6”** and in fact died testate, as is evidenced by his Last Will and Testament dated March 14th 2000 [**Exhibit “AA2 - AA5”**].

The Plaintiff claims that, by the terms of that Will, he, the Plaintiff, is the named Executor of the Estate of Richard Ovid Thorne, deceased and further he and his wife, Claudette Phoenix were devised a life interest in and to the “Property”.

The Plaintiff instituted this High Court Action claiming that Jacqueline fraudulently obtained Letters of Administration for the Estates of Ethel Thorne, deceased and Richard Ovid Thorne, deceased, and thereafter fraudulently conveyed the “Property” to the TND, who was complicit in the fraud.

The Plaintiff therefore seeks Orders, *inter alia*, revoking the Letters of Administration for the Estates of Ethel Thorne, deceased and Richard Ovid Thorne, deceased granted to Jacqueline and setting aside the Transport in the name of the TND.

The particulars of fraud pleaded with respect to the obtaining of the Letters of Administration for the Estates of Ethel Thorne, deceased and Richard Ovid Thorne, deceased is that she had no authority or standing to apply for either grant.

The particulars of fraud pleaded with respect to the conveyance of the “Property” to the TND is that the TND knew that the Plaintiff and his wife were “*beneficiaries under a Last Will and Testament in respect of the property*”.

The Defendants counterclaim for a Declaration that the Will exhibited by the Plaintiffs is fraudulent and invalid.

ISSUE I

Did Jacqueline obtain Letters of Administration for the Estate of Ethel Thorne, deceased, fraudulently.

FACTS

In addition to the facts stated in the background, the Plaintiff, [being the sole witness in the Plaintiff's case], baldly testified that Jacqueline had no authority or standing to apply for the grant [**Exhibit "X3" - paragraph 9**].

Counsel for the Plaintiff, in her submissions to the Court, simply relied on **Section 16 of the Deceased Persons Estates' Administration Act; CAP 12:01** of the Laws of Guyana in support of this claim.

LAW

Section 16 (c) of the Deceased Persons Estates' Administration Act; CAP 12:01 of the Laws of Guyana, which provides;

"Where it appears expedient to the Court to do so, it may on the application of any interested party appoint any person or persons to be an administrator to administer the estate of a deceased person in any of the following cases, namely, where-

(c) the person dies leaving a will appointing an executor or executors, but the executor or executors are or become insolvent, or have died, or are absent from and unrepresented in Guyana, or renounce, or are unwilling to act.

ANALYSIS

There really is not much legal analysis necessary on this ISSUE since the undisputed facts as was stated in the background are that Chief Justice Ian Chang issued an Order dated December 14th 2015 in High Court Action No. 2015-HC-DEM-CIV-SA-1124 that the Letters of Administration granted to the Plaintiff [**Exhibit "K"**] was spent since Richard Ovid Thorne had died in March 2008 [**Exhibit "L"**]

Letters of Administration with Will annexed De Bonis Non was then granted to the First Named Defendant [Hereinafter referred to as **Jacqueline** rather than FND since she is also the Second Named Defendant], to the Estate of Ethel Thorne, deceased on April 22nd 2016 by the Supreme Court [**Exhibit “E1 - E2”**].

Further, it is clearly stated on **Exhibit “E1”**;

*“Pursuant to an Order of Court dated 2nd June, 2015 and made in action No. 386/2015-S/A, **IT IS ORDERED** that JACQUELINE ALEXIS THORNE be empowered to apply for Letters of Administration with the will annexed De Bonis Non.”*

It is clear that the grant of Letters of Administration to Jacqueline for the Estate of Ethel Thorne, deceased, was facilitated and authorised by two Orders of Court excluding the actual grant, which is irrefutable proof that the very statute [**The Deceased Persons Estates’ Administration Act**] that Counsel for the Plaintiff relies on is the very statute under which Jacqueline was granted Letters of Administration for the Estate of Ethel Thorne, deceased.

The Plaintiff neither pleaded nor led evidence to show that Jacqueline misled the Court to obtain those Orders.

Merely pleading and testifying that Jacqueline had no authority or standing to apply for the grant was truly barely sufficient to maintain the claim in fraud and having led no evidence to show that she misrepresented her authority to apply for the grant inevitably results in failure of that claim.

CONCLUSION

Jacqueline **did not** obtain Letters of Administration for the Estate of Ethel Thorne, deceased, fraudulently.

ISSUE II

Did Jacqueline obtain Letters of Administration for the Estate of Richard Ovid Thorne, deceased, fraudulently.

FACTS

In addition to the foregoing facts, the Plaintiff testified that Jacqueline was aware of the existence of a Will at all material times [**Exhibit “X3” - paragraph 12**].

Under cross examination he specifically testified that he showed her the Will in 2016.

Prior to the Court declaring on December 14th 2015 in High Court Action No. 2015-HC-DEM-CIV-SA-1124 that the Letters of Administration granted to the Plaintiff for the Estate of Ethel Thorne, deceased, was spent, Jacqueline had caused her Attorney-at-Law to request in writing dated August 11th 2015 [**Exhibit “M1 - M2”**] that the Plaintiff vest title of the “Property” to her and her siblings, being the beneficiaries of the Estate of Richard Ovid Thorne, deceased since he [the Plaintiff] was the Administrator of the Estate of Ethel Thorne, deceased.

The Plaintiff accepted under cross examination that he did not reply to that letter.

Jacqueline subsequently instituted High Court Action 2015-HC-DEM-CIV-SA-781 against the Plaintiff to compel him to vest title [Exhibit “J1 - J9”] and the Plaintiff, in an “Affidavit in Answer” filed in that action alludes to the existence of a Will with respect to the Estate of Richard Ovid Thorne [Exhibit “V1 - V10”]. That affidavit is dated December 8th 2015.

The Plaintiff testified that he was in possession of a copy of the Will since 2000. He also presented a letter dated March 31st 2016 [Exhibit “AA1”] which seems to suggest that the Will was being mailed with that letter and an envelope post marked April 11th 2016 in Guyana [Exhibit “Z”] that he testified the Will was mailed in.

ANALYSIS

It is extremely dubious that the Plaintiff was in possession of a copy of the Will since 2000 and chose to exhibit a letter to his Affidavit in Answer dated December 8th 2015 [Exhibit “V4”] instead of a copy of the Will.

It is equally incredible that he would have had a copy of the Will and refused to respond to the letter demanding that he vest title of the property to Jacqueline and her siblings [Exhibit “M1 - M2”].

In addition the Plaintiff testified that Jacqueline was Richard Ovid Thorne’s sister when in fact she is his daughter, a fact that must be known to the Plaintiff, however, it would certainly be beneficial to the Plaintiff’s case to say that she is his sister since the claim is that she did not have authority or standing to apply for the grant.

These facts leads the Court to believe that the Plaintiff is not being frank and forthright with the Court and therefore not a reliable witness.

In any event the Plaintiff by his testimony stated that he did not show Jacqueline the Will until 2016.

It is undisputed that Jacqueline was granted Letters of Administration for the Estate of Richard Ovid Thorne, deceased on August 7th 2015.

The only particular of fraud that the Plaintiff pleaded is that Jacqueline did not have authority or standing to apply for the grant and based on the evidence this must be based on the contention that she could not apply for the grant in the face of a Will that named the Plaintiff the Executor of the Estate, since she is a child of the deceased.

This claim must fail since the Plaintiff has failed to show by any evidence that Jacqueline knew of the existence of a Will prior to obtaining the grant of Letters of Administration for the Estate of Richard Ovid Thorne, deceased or that she misrepresented her standing in her application for the grant.

CONCLUSION

Jacqueline **did not** obtain Letters of Administration for the Estate of Richard Ovid Thorne, deceased, fraudulently.

ISSUE III

Did the TND obtain Transport to the “Property” by fraud.

FACTS

In addition to the facts stated in the background the Plaintiff testified that the TND aware of the existence of a Will at all material times [**Exhibit “X3” - paragraph 12**] and also that he and his wife had numerous verbal altercations with the TND

prior to his ownership of the “Property” and during those arguments it was disclosed to him that they were the beneficiaries under a Will to the “Property” [Exhibit “X3” - paragraph 14].

Under cross examination the Plaintiff testified “*I can’t recall having discussions with Marshall. Never.*” and even further he testified that he did not know that the TND got Transport in 2016.

LAW

Ramdass v Jairam and Others [2008] 72 WIR 270 @ 280

“The issue of fraud raised in s 23(1) of the Deeds Registry Act was discussed by George J in Allicock v Demerara Bauxite Co Ltd [1968] GLR 140. In Waimiha Sawmilling Co Ltd v Waione Timber Co Ltd [1926] AC 101 PC, the Judicial Committee of the Privy Council expressed the view that fraud clearly implies some act of dishonesty, and dishonesty must not be assumed solely by reason of knowledge of an unregistered interest; in fact in that case the relevant statute governing transfer of land expressly provided that knowledge of an unregistered interest should not be imputed as fraud.”

ANALYSIS

It is once again clear that the Plaintiff is not a witness that can be trusted as he has changed his testimony with respect to the TND’s awareness of the existence of a Will.

It is clear that he, the Plaintiff, did not discuss the existence of a Will with the TND, either amicably or during a “verbal altercation”.

In the absence of any evidence that the TND was aware that the Plaintiff had any proprietary interest in the “Property”.

There is no evidence of any act of dishonesty by the TND.

The Court further finds that his testimony about an alleged conversation between his Attorney-at-Law and the TND’s Attorney-at-Law is vague as to whether he was present when the conversation occurred or whether the TND was present, which is unlikely since that case did not concern the TND to be accepted.

The Court will not place any reliance on that testimony on the ground that it is unclear as to whether it is hearsay evidence or concocted evidence especially coming from a witness that the Court finds untrustworthy and unreliable.

In any event the Court finds that the mere declaration by the Plaintiff, some seven years after the death of Richard Ovid Thorne, that a Will existed without the production of that Will and, considering that he previously refused to respond to written correspondence on behalf of Richard Ovid Thorne’s daughter concerning the property, is insufficient to convey any knowledge on any of the Defendants that the Plaintiff did in fact have a legal interest in the “Property”.

CONCLUSION

The TND **did not** obtain Transport to the “Property” by fraud.

ISSUE IV

Did the Plaintiff prove Will dated March 14th 2000 in solemn form.

FACTS

The Plaintiff led no evidence with respect to the execution of the Will.

LAW

George Chee v Cao Min Wei Et Anor Civil Appeal No 71 of 2002 (Guyana) per Chancellor Bernard ;

“It is trite law that in seeking to propound a will the burden of proving due execution and that it reflects the wishes of a testator of sound mind, memory and understanding who knew and approved of its contents rests at all times on the party propounding it”.

Section 4 of the Wills Act; CAP 12:02 of the Laws of Guyana;

“No will made in Guyana shall be valid unless it is in writing and executed in manner hereinbefore mentioned, that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and the signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and those witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.”

Section 9 of the Wills Act of the Laws of the United Kingdom;

“No will shall be valid unless— (a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and (b) it appears that the testator intended by his signature to give effect to the will; and (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and (d) each witness either— (i) attests and signs the will;

or (ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary.”

Alvarez v Chandler [1962] 5 WIR 226 @ 229 per Wooding CJ:

“The onus which lies in every case upon a party propounding a will is one requiring him to satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator: Barry v Butlin ((1838), 2 MooPCC 480, 1 Curt 637, 12 ER 1089, PC, 23 Digest (Repl) 131, 1357), per PARKE B (2 Moo PCC, at p 482). This is generally recognised as a fundamental rule of probate law. It is quite true that, in the absence of evidence to the contrary, a will which is shown to have been executed and attested in the manner prescribed by law, and which appears to be rational on the face of it, is presumed to be that of a person of competent understanding: Symes v Green ((1859), 1 Sw & Tr 401, 28 LJP & M 83, 33 LTOS 168, 5 JurNS 742, 164 ER 785, 33 Digest 146, 231); but, once there is evidence before the court which casts doubt upon the validity of that presumption in any case, its conscience cannot, or should not, be satisfied without some affirmative proof: Baker v Batt ((1838), 2 MooPCC 317, 12 ER 1026, PC, 23 Digest (Repl) 131, 1356), per PARKE B (2 Moo PCC, at pp 319320).”

ANALYSIS

The Plaintiff seeks to prove a Will that he claims was executed by Richard Ovid Thorne, deceased in solemn form and as stated by Wooding CJ in **Alvarez v Chandler**, citing **Symes v Green** with approval and Chancellor Bernard in **George Chee v Cao Min Wei Et Anor** it is mandatory that the Will be shown to have been executed and attested to as prescribed by law.

The purported Will was apparently executed in Plymouth, England, but is being propounded in Guyana and so due execution must be shown to have been in accordance with **Section 4 of the Wills Act** [Guyana] which, in any event, is similarly worded to **Section 9 of the Wills Act** [UK].

There is no evidence led to show that Richard Ovid Thorne, deceased signed the Will or that it signed by some other person in his presence and by his direction.

The absence of this evidence, without further, results in failure by the Plaintiff to prove the Will.

Notwithstanding that, the Court has grave doubts regarding the genuineness of the Will since the Plaintiff's testimony is very sketchy as to when he first knew of the Will or came into possession of the Will or a copy of the Will.

He testified that he had it since the year 2000 yet the only proof he produced showing that he received a package from England is dated in April 2016.

He claims to have known that Richard Ovid Thorne died in 2009, yet he did nothing with respect to the Will and it was not until Jacqueline filed an Originating Summons seeking to compel him to vest title of the "Property" to her and her siblings [**Exhibit "J1 - J9"**] that he first alluded to the existence of the Will when he filed an Affidavit in Answer to the Originating Summons [**Exhibit "V1 - V10"**] which was filed **ten weeks** after he was served with the Originating Summons according to the fly sheet [**Exhibit "U"**] and almost **seven years** after the death of Richard Ovid Thorne.

The sudden appearance of the Will is suspicious and the Plaintiff has not led any evidence to satisfy the conscience of the court that the instrument propounded is the last Will of a free and capable testator.

CONCLUSION

The Plaintiff has failed to prove the alleged Will of Richard Ovid Thorne, deceased, in solemn form.

In the circumstances the Plaintiff's claim is wholly dismissed.

While there is insufficient evidence for the Court to Declare that the alleged Last Will and Testament of Richard Ovid Thorne, deceased dated March 14th 2000 was obtained by fraud or under suspicious circumstances, the Court Declares that the Will has not been proven in solemn form.

The Court Declares that the Letters of Administration for the Estates of Ethel Thorne, deceased and Richard Ovid Thorne, deceased, were lawfully obtained.

The Court awards costs in the sum of \$150,000.00 to Jacqueline and \$150,000.00 to the Third Named Defendant, Andrew Marshall, against the Plaintiff.

Justice N. A. Singh